Report of the

National Planning Meeting on Hate Crime and Bias Activity

April 16 & 17, 1997
Ottawa

Prepared by the Pearson-Shoyama Institute
for the
Honourable Hedy Fry, P.C., M.P.
Secretary of State
(Multiculturalism) (Status of Women)

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National Planning Meeting on Hate Crime and Bias Activity
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Hosted by the
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Secretary of State (Multiculturalism) (Secretary of State)

Report prepared by the Pearson-Shoyama Institute, May 1997

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Introduction:
The Objectives, the Outcomes

The problem of hate crime and bias activity in Canada is not a new one.

The targets of hate are many, most notably, racial minorities, religious minorities, lesbians and gays, but not limited to them. Hate crime directed against women, Aboriginal peoples, people with disabilities and senior citizens is also prevalent although not as well known. Such crime and activity is not limited to any specific regions of the country. Some takes place in big cities where the large numbers of immigrants and minorities and openly gay people seem to attract the purveyors of hate, while some takes place in areas of the country which are comparatively homogeneous and where there is less ready response to hate mongering.

Efforts to combat hate crime and bias activity require a combination of legal action, public awareness and community effort to address the various aspects of this problem. A partnership approach involving all levels of government, community groups, police services, boards of education and other concerned individuals appears to be required.

Two-fold objective

With this in mind, Secretary of State for Multiculturalism and Status of Women Dr. Hedy Fry

convened a **National Planning Meeting on Hate Crime and Bias Activity** in Ottawa on April 16 and 17, 1997, with a two-fold objective of identifying the *priority issues* that need to be addressed along with the *best processes* for addressing these issues.

The Pearson-Shoyama Institute was asked to undertake the organization of the meeting, including the development of an agenda, preparation of background papers, selection of participants and preparation of the report from the meeting. This was accomplished in collaboration with officials of the Department of Canadian Heritage and the departments of Justice and the Solicitor General.

Dedicated to a policy development process that is genuinely inclusive of the people concerned with the policy issue at hand, the Institute welcomed the opportunity to assist in bringing together a cross-section of stakeholders and concerned citizens to advise the government on policy priorities and a process for action. The Institute is not an advocacy organization so is not an advocate of any particular policy options. Advocacy on the issues coming out of this meeting will continue to be the responsibility of the community organizations, school boards, police services and government departments that attended the meeting. A well informed cross-section of people was brought together to identify policy priorities and suggest relevant processes.

Outcomes

Participants identified the need for a national strategy to combat hate crime and bias activity which would bring all the stakeholders together in partnership to deal with the many facets of this problem. This is outlined in detail in this report.

Report as a resource tool

This report provides a detailed overview of the proceedings of the meeting, and together with the background papers and the appendices, provides a tool for those engaged in the fight against hate crime and bias activity.

Acknowledgements

Many people contributed to this report. Most notable were all the participants and observers who attended the Planning Meeting in April and generously contributed their views and expertise to the process. Prior to and subsequent to the meeting, the writers were Rubin Friedman, Carroll Holland, Kathy Innes and Fiona Lam. For reviewing drafts of the report, I want to thank participants Ladan Affi, Wilma Clarke, Carol MacGregor, David Pepper and Antoni Shelton; workshop facilitators Diane Gibeault, Karen Mock and Carol Paschal; PSI project officer Jacquie Lawrence, copy editor Mary O'Neil and officials from the departments of Canadian Heritage, Justice and Solicitor General. Their comments helped greatly in ensuring that the report captured the issues and recommendations discussed.

L. Andrew Cardozo
President
Pearson-Shoyama Institute
May 1997

Executive Summary

The National Planning Meeting on Hate Crime and Bias Activity, convened under the auspices of the Honourable Hedy Fry, Secretary of State (Multiculturalism)(Status of Women), gathered together stakeholders working to address hate crime and bias activity in Canada. Representatives of community groups most affected by hate crime and bias activity met with officials working in the areas of justice, enforcement, multiculturalism and human rights on April 16 - 17, 1997 in Ottawa. Participants were asked to identify the key issues requiring action and recommend processes by which government and other stakeholders may best address these issues.

Priority Issues and Process Recommendations

Participants worked in three groups and addressed three broad subject areas: Legislative and Policy Issues; Community Development and Social Justice Issues; and Technology and International Issues. Priorities were identified and recommendations made under each of the three subject areas.

Legislative and Policy Issues

Priorities identified in this area included the need for background information and analysis of recommendations made to date, the need for an evaluation of the effectiveness of criminal,

administrative and civil law remedies; and the need to examine victims' issues.

The following recommendations were made:

1. all existing recommendations made by stakeholders in recent years need to be compiled along with a status report on their implementation;
2. the effectiveness and limitations of existing statutes need to be evaluated and the relevant problems and gaps that exist should be identified;
3. national and consistent definitions of "hate crime" and "target groups" subject to hate crime and bias activity must be developed;
4. more training and education for police, Crown attorneys and educators is required; and
5. protection, education and counselling for victims of hate crime needs to be provided.

Community Development and Social Justice Issues

Priority issues identified by members of this working group included: failure to apply legislation to address hate crime and bias activities; the need for a national definition of "hate crime" and for national standards for the collection of related statistics; training and education for stakeholders and the development of tools; youth education and support; the development of partnerships between communities and police; and government commitment at all levels.

This working group made the following recommendations:

1. a National Anti-Hate Strategy should be developed, based on partnership of governments, community groups, police services, school and library boards, accountable to a body consisting of those communities affected by hate crime and bias activity;
2. increased resources and tools to help communities, schools and youth to combat hate crime and bias activity are needed; and
3. a "National Hate Crime Statistics Act" should be established.

Technology and International Issues

Working group members identified several priorities including the need for a stronger federal presence on the Internet and the need for an international comparative study on what is being done in this area. Consistency in the application of the *Criminal Code* across Canada and an increased understanding of both criminal and civil law by stakeholders were also seen as priorities. The group identified the need for increased community awareness and public education on hate on the Internet; an examination of "blocking software", clarification of obligations of police, prosecutors, Attorneys General and private citizens in maintaining a civil society; a unified approach among all levels of government and police; and consolidation of federal expertise and resources.

The following recommendations were made:

1. the federal government should consolidate its efforts to counter hate on the Internet, primarily through the Canadian Human Rights Commission;
2. the Department of Justice should clarify the ground rules for criminal prosecutions concerning hate on the Internet;
3. communities which are targets of hate should be assisted so they can gain greater access to the Internet and become more aware of relevant laws and their use;
4. membership in hate groups should constitute grounds for exclusion from Canada; and
5. government should work through international bodies to advance international standards against hate crime and should share information on hate organizations.

Major Process Recommendations

In the final plenary session of the meeting, participants were asked to identify an overall process through which the recommendations put forward earlier in the day could be advanced. Consensus was reached on the need for a National Anti-Hate Strategy and that the success of the strategy would depend on the political will of the Government to address this issue, public statements by key Ministers; and a commitment to bring the participants of this meeting together within the next year to review the outcomes of actions taken.

Participants also identified key components of a National Anti-Hate Strategy, including:

1. development of a standard definition of "hate";
2. support to grassroots organizations working to address these issues;
3. development of communications strategies and public awareness campaigns;
4. provision of hate crime and bias activity training for both non-government and government stakeholders and an evaluation of current race relations training;
5. recognition of those making a positive contribution to combatting hate crimes;
6. coordination with provincial education ministries and regional school boards for the development of programs in this area, especially to address the recruitment of youth by hate groups;
7. establishment of a national body to monitor hate activities, audit and advise on government policies, programs and legislation, disseminate information, and sustain the alliances created at the National Planning Meeting;
8. development of a national data bank and information centre to collect, catalogue and make available all resources related to hate crime and racism;
9. development of a national directory of organizations working to address anti-hate; activities as well as listings of groups known to promote or incite hate, and
10. independent research on hate, its causes and manifestations.

WORKSHOP REPORTS

Workshop Report # 1

LEGISLATIVE AND POLICY ISSUES

1. OVERVIEW

The purpose of this workshop was to identify the priority issues relating to existing legislative and policy measures that address hate and bias crime and activity, and then to identify the processes that would best tackle those issues. Present at the workshop as participants were representatives of various community organizations, the Crown, and police. Observers included representatives from Canadian Heritage, Statistics Canada, the Department of Citizenship and Immigration, the Solicitor General, the Department of Justice, and the CRTC.

2. SUMMARY OF WORKSHOP DISCUSSIONS

The issues of concern in this area could be classified into three main areas: legal reform; enforcement and prosecution issues; and victim issues. The existing legislative mechanisms to address hate and bias crime and activity include various criminal law provisions, federal and provincial human rights legislation, regulations under the *Broadcasting Act* as well as provisions in the *Customs Act* to keep out hate propaganda, and in the *Immigration Act* to keep out hatemongers.

These areas of legislative action were felt to be extremely broad as well as complex, with any one

specific area (such as a single section of the *Criminal Code*) requiring a workshop or more in itself. The participants did provide a list of broad issues in the area of criminal and civil law reform; however it was felt that more information on previous recommendations which address gaps or problems with the existing provisions would have been helpful.

On the question of enforcement and prosecution, the participants emphasized the need for consistency. It was felt that different jurisdictions presently enforce the law differently. The question of uniform definitions of "hate motivation", "hate crime" and "hate activity" for police; the need for hate and bias crime statistics to be kept; and the need for training and standards in all sectors (including police, Crown representatives and judges) were mentioned to address this concern.

There was also a significant amount of discussion about whether the needs and fears of victims of hate and bias crime and activity were being adequately addressed by the justice system. A few participants noted that some victims of hate and bias activity would end up being charged for responding to racist provocation or incitement, whilst their tormenters would not be charged.

The question of assistance to Aboriginal communities in addressing hate crime was mentioned in connection with the three main areas of concern. It was felt that, based on past negative experience, these communities might not feel comfortable in coming forward to police, or in following through with a human rights complaint.

3. RECOMMENDATIONS ON THE PRIORITY ISSUES

A consensus emerged that there was insufficient time and background data on existing recommendations for the workshop to be able to come up with fully outlined, specific priorities, or to arrive at a clear, practical, concrete and realistic process of achieving those recommendations. It was agreed that legislative and policy issues in this area are extremely complex, cutting across federal-provincial and even municipal jurisdictions. Nonetheless, a kind of framework for action and analysis was formulated. It was agreed not to explore the issues related to the Internet, because they would be addressed in the third workshop.

3.1 Need for Background Information and Analysis

It was agreed that a number of recommendations had already been made by non-governmental organizations, academics, police, independent bodies (such as the Law Reform Commission), and various government departments and agencies to address inconsistencies, barriers, and other difficulties with existing legal remedies. It would be vital for all stakeholders to be familiar with the recommendations made thus far, as well as their drawbacks and benefits, in order to assess what further action is necessary. There was a wish not to re-create the wheel. Thus, the following suggestions were made:

- There is a need to **compile all recommendations** made by **all** stakeholders in this area.

- All stakeholders should be provided with a detailed **status report** on what has already been done with those recommendations, in terms of stage of implementation and responsible body (i.e., who has done what).

3.2 An Evaluation of the Effectiveness of Criminal, Administrative and Civil Law Remedies

All of the participants wished to have the effectiveness of administrative and civil law remedies explored to a greater extent. It was felt that the *Canadian Human Rights Act* had been more helpful than the *Criminal Code*, in light of the number of successful cases, the lower burden of proof, and the lack of a requirement for consent from attorneys general. There was some concern expressed that the process with some of the provincial human rights commissions was too slow. More analysis on how provincial human rights codes could further counter hate and bias activity was suggested, as was a look at the effectiveness of existing regulations under the *Broadcasting Act*. On the subject of remedies in the civil courts, one participant suggested that the success of civil rights recourse in the U.S. could be instructive. Another suggested looking at the tort of defamation. Some expressed concern that civil court actions would be prohibitively expensive for most litigants, while others expressed concern that these avenues could end up harming individuals or communities affected.

As for criminal law, virtually all participants were concerned about its uses and limitations of the criminal law in prosecuting hate crime and activity. There was a desire to explore the impact of other provisions in the *Criminal Code*, the risks posed by Charter challenges, the undue restrictions posed by the existing legal defences, the high burden of proof, and the impact of the new sentencing provisions. To this end, there was a desire expressed by many participants to be provided with an analysis of the extent to which cases and other forms of intervention are truly effective in order to know what legislation actually works and where there are serious gaps. For example, participants identified difficulties with the inclusion of the term "wilful" in s.319 of the *Criminal Code*.

Several participants were concerned about the potential misuse of legislation against targeted groups, or between factions of a particular community. They wanted to see a clear delineation of who could use the legislation, as well as clearer definitions of hate crime and bias activity.

The following recommendations were made in this area:

- The effectiveness and limitations of existing statutes on hate crime and bias activity need to be evaluated.

- The problems and gaps in existing federal and provincial statutes dealing with hate crime and bias activity need to be identified, along with proposals for reform to address those

problems and gaps.

3.3 An Examination of Victims' Issues

The need to deal with the question of who is a victim of hate crime was raised as a very significant issue for most participants. Are women and persons with disabilities also considered victims of hate and bias crime and activity? Should they or the issue of sexual orientation be included in the definition of "identifiable group" contained in s.319 of the *Criminal Code*, for example, given that human rights codes provide that all grounds of discrimination are covered for discriminatory notices and symbols? How the various target groups may differentially experience hate crime and bias activity was raised, as was the issue of how the synergy of a number of factors or grounds of discrimination might impact upon individuals (e.g., hate activity targeted against minority women).

It was underlined that there is a need for more avenues of recourse for victims of hate crime and bias activity, to empower them so they see themselves as active rather than passive actors, and have more confidence in the justice system.

There was a concern that targeted individuals and groups do not feel that they will be afforded sufficient protection before and after charges or complaints are laid. Witnesses may be deterred from laying complaints or testifying because of intimidation by hatemongers. Another concern was that police and educators are mishandling situations where victims have been subjected to racist taunting which has provoked or incited a response for which the victims are subsequently charged, while the instigator goes free. The suggestion was made that victims should have recourse to an independent review of situations in which police refuse to lay charges or the Crown does not proceed with a prosecution.

Participants indicated that more resources should be provided to victims of hate crime in the forms of education, counselling and other means of support. Moreover, it was mentioned that a cross-jurisdictional analysis of the effectiveness of various community initiatives in this area should be initiated to identify how funds might best be applied.

Recommendations in this area included the following:

- The adequacy of the existing definition of a "target group" for hate crime (i.e., should it address hate motivated by gender, disability and/or sexual orientation) and the effect of intersecting grounds of discrimination need to be examined.

- There is a need to develop and incorporate training on racist provocation and incitement for police, Crown and educators to prevent victims from being doubly persecuted.

- Alternative and additional avenues of recourse for victims of hate and bias crime should be

examined.

- More protection, education, counselling and other supports should be provided for victims of hate crime.

- An appeal process for victims whose cases are not pursued should be initiated.

3.4 The Need for Consistent Enforcement and Prosecution

Again, participants identified enforcement and prosecution as broad areas which in themselves require intensive examination and action. The effectiveness of enforcement and prosecution are directly linked to the efficacy of existing legal provisions. The majority of participants were concerned that steps be taken to examine how to achieve consistent enforcement and prosecution in view of differing practices across jurisdictions. It was suggested that more inter-jurisdictional networking occur; that more unified training procedures and standards be established on the issue of hate crime (e.g., what kind of evidence to look for); and that measures be taken to ensure the consistent application of the law so frivolous cases are filtered out and the many significant cases proceed, despite the cost and complexity of the issues.

Some suggested that the government institute a mandatory requirement for police to report on hate-motivated crimes and hate crime and activity, and that there be regular audits of such reports. Police hate crime units could be linked with community groups to assist the reporting process.

In many targeted communities, such as the Aboriginal communities, a legitimate lack of trust in the justice system prevents individuals or groups from coming forward with a complaint. Therefore, participants indicated that more work must be done on appropriate training (in conjunction with affected communities) for all sectors of the justice system: Police, Crown and judges must understand the impact of hate crime in such communities, and what steps they can take to instill confidence in the system by being more aware of the existing barriers, and taking measures to remove them.

Some felt that attention could also be given to how different jurisdictions handle "minor infractions" which may not proceed through a prosecution under s.319 of the *Criminal Code*. Mention was made of the need for collating existing studies and data on enforcement from government departments, police and community groups--including the gathering of relevant statistics on complaints, charges, prosecutions and convictions.

In sum, the following recommendations were made:

- There is a need for inter-jurisdictional networking on enforcement and prosecution issues.

- Uniform definitions of hate crime across jurisdictions should be developed.
- More unified and consistent training and standards on hate crime and bias activity for justice system players should be developed.
- There should be a mandatory requirement for reporting both hate-motivated crimes and hate crimes, as well as regular audits of such reporting.

4. RECOMMENDATIONS ON PROCESS FOR ADDRESSING THESE ISSUES

Participants put forward a number of processes or strategies to deal with the issues identified. It was suggested that the government establish a multi-disciplinary and inter-jurisdictional task force on hate and bias crime and activity, similar to the one on family violence. It would have a one year time frame and would be open to community groups.

The notion of a national forum was also mentioned, focusing on the effectiveness of legal (criminal and civil) remedies. Some suggested a federal/provincial/territorial working group, with federal leadership, to specifically deal with this issue. Provincial and federal human rights bodies should be involved as well.

The existing National Crime Prevention Council could be used as a model for setting up a body to deal with hate crime specifically; or a national clearinghouse on hate crime (including information on training and community development) could be funded and established.

All participants focused on the need for a status report to identify existing recommendations and measures by government departments in the areas of legal reform, victim support and enforcement. This information would benefit both communities and governments and could be used as a "report card" to keep governments accountable. This type of reporting would also allow for a fuller debate on areas of dissent and consensus and would provide communities with more opportunity to digest and analyse information and formulate concrete recommendations for change. The tabling of a government white paper for input from communities was suggested, but some felt that recommendations and solutions should be community driven.

Workshop Report # 2

COMMUNITY DEVELOPMENT & SOCIAL JUSTICE ISSUES

1. Overview

The purpose of this workshop was to identify the issues that GO beyond the law--issues that address the role of communities and the importance of social justice in combatting hate crime and bias activity. In addition, the participants identified processes for implementing recommendations relevant to the issues. Participants included a number of people active in community groups, as well as representatives from police services and the education system. Observers from the Department of Justice, Office of Disability Issues, Canadian Heritage and the RCMP were present.

2. SUMMARY OF WORKSHOP DISCUSSIONS

2.1 The Law

Most concerns raised in this area centred around non-application of the law. For example, several participants expressed concern that the new sentencing law, Bill C-41, has yet to be applied and that the exclusion of a definition of hate crime will make it ineffective. Another concern was non-

application of federal legislation at the community level, or inconsistent application against certain groups. It was also noted that transgendered people have no human rights protection, and that sexual orientation is not included in the anti-hate law in the Criminal Code. Participants also recommended that amendments to rules of evidence are needed in order to operationalize the law and to clarify what constitutes verbal and non-written evidence as well as evidence related to property crimes.

2.2 Definition of Hate and Hate Crimes

All participants agreed on the need for a national definition of hate crime and national standards for the collection of related statistics. Participants felt the need for a better understanding of why people hate and what constitutes a hate crime, and for education in this area addressed to communities, the police and players in the criminal justice system.

Some participants offered the following examples that demonstrate the inadequacy of current definitions and how poorly hate and hate crime are understood:

- A woman with a disability was abused by her caregiver; the response of the police department was that it was a first offense.
- In B.C., a bomb was placed in a group home for developmentally disabled people.
- Statistics show 31 murders of gay men in Montreal, and one complaint of gay bashing per day.
- A Native Friendship Centre in Saskatchewan had windows smashed and was broken into. A few months later, they received hate mail and could not get any information from the police because the perpetrators were young offenders. Through the media, they discovered that two thirty-five-year-olds had been charged with "wilful damage". An officer denied having said they were young offenders and said there must have been a misunderstanding. This case is currently before the courts.
- A family business was broken into and the perpetrators were white supremacists. One admitted that he did it because he "hates immigrants". This incident was not considered a hate crime because the people involved were not aware.

Some police services, included the Ottawa-Carleton Regional Police, have taken a proactive stance on not tolerating hate crime, which has led to an increase in reporting. The success of this model is attributed to educating both the community and the police.

2.3 Training/Public Education/Tools

The issue of training and education for police came up frequently throughout the discussions because, "education is paramount to tackling hate crime." Participants felt a national training program for all stakeholders is needed, including training for judges, politicians, government

officials and the media. Participants also felt that spokespersons and the media have a role to play in educating police and communities.

Participants felt that police officers require additional training on all groups and their issues, including those faced by gays and lesbians, bisexuals, the disabled and those in the transgender community. Police, as well as organizations serving these groups, need to be sensitized to acts that constitute hate, and not just a violation of human rights. Police officers must be able to identify hate crimes when they occur, and there should be an appropriate balance of police responses to organized hate groups and overt problems like gay bashing. The solutions noted include investigation and education. "Intelligence gathering" and community policing are important components of police response.

All participants agreed on the need for tools to be developed, including a community guide on how to approach the Crown and all components of the criminal justice system, and a guide for frontline officers on how to identify hate crime and collect evidence. The limitations of this approach were pointed out--it was noted that practical experience and exposure are paramount for police officers. There is a need also for more French language resources since most existing resources are in English. There is a need to have training sessions on diversity, such as the three-day course, "Client Service and Social Diversity," offered in Québec, in which it was found that officers wanted to know basic things like what are skinheads and punks.

2.4 Youth Education and Support

Some people expressed the need to involve more youth in this kind of meeting since the majority of perpetrators and recruitment targets are young people. Student awareness can be increased through history courses (the Ontario curriculum, for example, does not include the Holocaust) and having speakers with direct experience of hate groups and hate crimes discussing the reality of hate crime.

Teachers need training because they often are not familiar with hate activities, hate groups and their recruitment methods; parents need to know what could be happening to their children. There must be more support for children and youth--they need places where they belong, feel valued and feel powerful. They need alternatives to the slick hate groups.

2.5 Partnerships

While examples were cited of communities and police in the United States working closely together, it was felt that in Canada, there is often resistance to such partnership, in spite of the need for cooperation among prosecutors, judges, police and the community. Officers must be made aware that more than eighty percent of their work involves working with the community; police work must be rewarded on a different basis, stressing prevention in cooperation with the

community rather than simply tallying the number of arrests.

2.6 Government Commitment at All Levels

One participant asked, "How important are the issues, and how much money has been put into them?" The slashing of health care and social services is taking away existing protections. It was noted that two years ago, at another conference, the government committed to examining the feasability of a National Hate Crimes Statistics Act and a corresponding centre, but has yet to establish either.

The issue of hate crime should be raised by all political parties, and groups such as the Federation of Canadian Municipalities can help to emphasize issues and make recommendations for change. There is a lack of communication between the federal and provincial authorities; moreover, both these levels of government should work more closely with municipal governments who are, in turn, closer to communities.

3. RECOMMENDATIONS:

The following recommendations were identified by the group as priorities:

National Anti-Hate Strategy

1. The creation of a national anti-hate strategy, accountable to a body driven by affected communities, was recommended. There is a need to define target communities in the legislation as is done in the *Canadian Charter of Rights and Freedoms* and the *Canadian Human Rights Act*-- to amend sections 3.18 and 3.19 to include sexual orientation under the anti-hate law, and to address the exclusion of other groups such as persons with disabilities. Some in the group felt this strategy should have a more positive name than "anti-hate".

2. The national anti-hate strategy must be based on a partnership of all community-driven stakeholders. There is a need to rely on community-based solutions as well as police and community partnerships. One such example is a successful program in Ottawa driven by the Jewish and gay communities.

3. The national anti-hate strategy should target hate group recruitment of young people; therefore, the Secretary of State for Training and Youth should be working with the other ministries and levels of government active in this area. The strategy should also address the issue of youth as perpetrators.

4. Strategic entry points of the strategy and education around hate crime should include:

- municipal governments (where education needs to be ongoing in light of elections every three years);
- school boards;
- library boards (in Victoria, hate groups are distributing materials through libraries and the board does not want to take action);
- federal and provincial ministries; and
- religious institutions.

5. Creation or identification of a national organization to support the work of grassroots organizations to build links and better communication.

Tools and Resources

6. Inclusive how-to tools for communities dealing with hate, and promoting its opposite, must be developed--tools comparable to the National Crime Prevention Council's *Building a Safer Canada* (which, unfortunately, excludes gays, lesbians and people with disabilities). These tools could include video and other media.

7. Resources for awareness and education for communities, schools and youth (such as speakers, videos, and comic books and other literature and materials) must be developed.

Definition and Statistics

8. A standard definition of hate crime must be developed and used nationwide in relation to *Criminal Code* offences. The definition should come from best practices and in consultation with concerned communities.

9. A National Hate Crime Statistics Act is needed, based on self-identification of bias and hate crime, and which meets reporting objectives. Some felt the Act should be as flexible as possible to ensure the broadest possible inclusion of incidents.

Background Information

It was noted that the background information did not give adequate information on the hate crime and bias activity against people with disabilities. A report that should be included is, *Equal Citizenship for Canadians with Disabilities: The Will to Act*, Report of the Federal Task Force on Disaibility Issues, October 1996 (Chair: Andy Scott, M.P.)

It was also noted that the background paper for this workshop quoted another report that suggested hate crime was on the decrease. Rather, some participants asked that it be clearly

noted that it is only overt activity that was on the decrease during a two year period; there is considerable concern about underground activity which appears to be on the increase.

4. RECOMMENDATION ON PROCESS TO ADDRESS PRIORITY ISSUES:

The process to move forward suggested by the group was a joint press conference of the Attorney General, the Solicitor General, and the Secretaries of State for Multiculturalism and Training and Youth within 30 days. This conference should feature the announcement of a **national anti-hate strategy,** with adequate resources for community groups and other partners, and an **annual progress report** on the national anti-hate strategy.

Workshop Report # 3

TECHNOLOGY AND INTERNATIONAL ISSUES

1. OVERVIEW

This workshop was designed to address technological issues--i.e., the Internet as a mechanism to both spread and combat hate--within Canada and internationally. The other international issues addressed were laws that can prevent hate material and hatemongers from entering Canada.

2. SUMMARY OF WORKSHOP DISCUSSIONS

2.1 What Has Been Done? What Has Worked?

The consensus was that, while some interesting research and preliminary discussion papers had been prepared on the Internet, little has been done by government to follow up. Voluntary organizations, such as Nizkor Project, the Anti-Racism Response Network Information System in Toronto, B'nai Brith League for Human Rights and others, have been at the forefront in promoting awareness of the issues. While the Canadian Human Rights Commission has also been more active recently, there is no coordinated and concerted federal government action on the Internet and other international issues.

Participants identified the following as examples of what has been done to combat hate crime and bias activity:

- Some statistics on hate crimes and bias activities have been collected and some studies produced (e.g., B'nai Brith League for Human Rights' annual audit of anti-semitic incidents, bias crimes police units' statistics, etc.) but there is no uniform definition or methodology for doing so nationally or on the Internet. Citizenship and Immigration, in cooperation with Statistics Canada, has a data base on the contributions of immigrants to Canada, but public access is limited.

- The Department of Justice has provided more information on hate laws and hate activities on its Web site; this illustrates how government can distribute its information, information that is essential for those who wish to promote public education on hate and the Internet.

- Studies have been produced on the nature of hate propaganda on the Internet (such as Gareth Sansom's paper for Industry Canada, and the Anti-Defamation League booklet on hate sites on the Internet) and on the applicability of Canada's laws (such as the 1997 study done for Industry Canada). Suggestions have also been made to educate Internet service providers on Canadian laws and their applicability.

- Voluntary groups, such as Hatewatch, Nizkor Project and others, have monitored and responded to hate messages on the Internet. Nizkor has archived messages from individuals promoting hatred on the Internet. These individuals are often embarrassed by what they have said in the past. Hatewatch has a guide to hate Web sites on the Internet, categorized by their bias.

- The *Canadian Human Rights Act* has been used in the past to shut down telephone hate messages. Ernst Zundel's site is currently being reviewed for action by the Canadian Human Rights Commission.

- The need for international attention to the issue of hate on the Internet has been raised at both the United Nations Commission on Human Rights and the Organization for Security and Cooperation in Europe.

- Revenue Canada has stopped importation of a number of hate propaganda books; guidelines have been updated and distributed to customs officers.

- With regard to immigration, current law requires that Citizenship and Immigration Canada officers must have demonstrable grounds to believe that individuals will disturb the peace or break the law in Canada in order to keep them out. There is no specific exclusion based solely on membership in a hate organization, so a history of hate-related activities in another country may not be considered relevant.

2.2 What Is Left to Be Done?

The group consensus was that the federal government now has to put resources into dealing with this issue and must work in partnership with communities, experts and other levels of government. Several areas of action were identified. In a number of initiatives, it still remains to be worked out where the government should lead, and where it should be supportive of the efforts of others. It was also strongly emphasized that action on the Internet and international issues should be part of an integrated approach to equity and human rights.

The following issues were identified for action:

- There is a need for a stronger presence by Statistics Canada and other departments (such as Revenue Canada and Citizenship and Immigration) on the Internet--and greater accessibility of government information.

- A comparative study of what is done in Canada and in other countries is needed. An example was cited of such a study on the issue of freedom of expression versus freedom from hatred: *Striking a Balance: Hate Speech, Freedom of Expression and Non-discrimination* (edited by Sandra Coliver; contributing editors Kevin Boyle and Frances D'Souza; published by Article XIX, International Centre Against Censorship, Human Rights Centre, University of Sussex; 1992).

- Prosecution has been little used; there was no consensus on the advisability of prosecution under the *Criminal Code* but all agreed on the need for consistency across Canada. Police in different jurisdictions don't know how to identify and track down perpetrators. There is a need for will on the part of prosecutors, and resources to deal with the cases.

- In general, a civil law approach was preferred to prosecution: it was felt that the *Canadian Human Rights Act* could be used more for cases related to the Internet. However, there is not enough existing case law to be sure of how courts will rule on questions of jurisdiction. The current Zundel case may provide clarity. There is a need for more cases, particularly those related to the Internet.

- Better understanding of this area of the law and, therefore, better preparation are needed. There was a concern that complaints not well prepared have a negative effect; they result in an acquittal and a political victory for hatemongers. This, in turn, gives Canada a bad reputation internationally.

- More work on community awareness and responsibility for personal action (complaints) is required. Members of the public, especially affected communities, need to be educated about the Internet, hate on the Internet, and the application of Canadian law. This raised the related issue of community access to the Internet. How can we better equip disabled persons, immigrants, and francophones (for language is also an issue) to participate on the

Internet? What is the role of the federal government in improving access to the Internet?

- There is a need to clarify the obligations of police, prosecutors, the Attorney General, and ordinary citizens with respect to maintaining a civil society. Actions on the Internet must be linked to the context of government commitment to equity. Our approach domestically must be consistent with Canada's role as an advisor on international human rights.

- A unified approach among federal, provincial and municipal governments, and all levels of police (on all areas related to hate crimes and bias activities) is necessary.

- There should be more effort at education--of the general public, politicians (it was stressed that politicians need to speak out about hate in all its forms), and within the school system. In the schools, general analytical skills in assessing information and information sources must be stressed; one can't prevent all exposure to hate or propaganda, therefore kids need basic tools.

- More research on the links between poverty and hate is needed.

- Expertise and resources across the federal government should be consolidated and better linked. The Human Rights Commission is one possible centre for expertise if resources are provided for it to carry out this function. Justice must continue to play a cross-government advocacy role in the use and application of the law. There must be a visible commitment of resources.

- A careful approach to "blocking software" should be examined. This software is acceptable when used by parents but has the potential to create perverse anomalies when used by public institutions. The example was given of the Boston Public Library which now blocks access to Nizkor because it contains references to hate propaganda. The result is that access to Holocaust education and education on hate is blocked.

3. RECOMMENDATIONS FOR ACTION

Again, the consensus in the group was that an overall plan of action is needed to integrate efforts on the Internet within a coordinated government approach to equity and human rights issues. Participants expressed a desire to see the federal government give concrete and visible evidence of political will to deal with hate and bias activities. The focus of discussion was the Internet, but much of what was presented was seen as applying more generally as well. In the areas of immigration and Revenue Canada, the main concern was effective use of resources and up-to-date expertise. The elements proposed by participants include:

3.1 Federal Leadership

i) The federal government should consolidate its resources and jurisdictions in the Canadian Human Rights Commission and the Department of Justice. Resources should be specifically identified to gather information and establish a centre of expertise on the issues of hate and bias activities, including hate on the Internet.

ii) The Department of Justice should clarify the ground rules for criminal prosecution and apply the law. Members of the group proposed that prosecution be used for clear cut cases; wider use of the *Canadian Human Rights Act* was preferred in the case of hate on the Internet. Indeed, more cases will clarify the application of the *Canadian Human Rights Act* to the Internet.

iii) The Departments of Justice and Citizenship and Immigration should make membership in a hate organization grounds for exclusion from Canada.

iv) The federal government must coordinate with provinces, municipalities and all levels of enforcement on definitions and application of the law. There must be a visible national effort on these issues.

v) The federal government should develop an action plan for public education on hate crime and bias activities, including hate on the Internet.

vi) Participants were looking for a commitment of federal resources to developing and implementing the above mentioned measures.

3.2 Public Education

i) The federal government should undertake more posting on the Internet of relevant national and international statistics and policies (e.g., provide greater access to Citizenship and Immigration statistics on immigrants and refugees).

ii) Education programs and packages on the law and its application to the Internet and other contexts are needed for professionals--police, teachers, social service workers, politicians, bureaucrats and Internet service providers.

iii) There needs to be a national effort to develop school materials and curriculum relating to hate and bias activities, human rights, and the Internet.

iv) Community access programs should be developed for disadvantaged groups on topics such as technology use, advocacy skills, awareness of relevant laws and their use, and dealing with hate in the family.

v) Public awareness campaigns on hate and bias activity generally, and on the Internet specifically, should be undertaken separately or as an integral part of the March 21 anti-racism campaign.

3.3 Partnership Building

i) In all the above-mentioned activities, it is essential to involve police, communities, all levels of government, researchers, educators, and Internet service providers.

ii) The federal government should support a network of those dealing with hate on the Internet, and hate and bias activities in general.

3.4 International Efforts

i) In concert with NGOs (such as the UNCHR, OSCE, *la francophonie*, and the Commonwealth), the federal government should develop a strategy for promoting international standards on hate crimes and on hate on the Internet.

ii) The federal government should support research on other countries' approaches to these questions.

iii) The federal government, in cooperation with its other partners, should pursue international information sharing on hate organizations and their members. (Relevant information might, for example, be shared among the police, Citizenship and Immigration and various NGOs.)

Plenary Report

THE OVERALL PROCESS

THE NEXT STEPS:
REPORT FROM PLENARY SESSION ON FUTURE PROCESS

1. PREAMBLE:

"We are looking for a process," stated Hedy Fry, the Secretary of State for Multiculturalism and the Status of Women, who challenged the participants to suggest concrete directions to counteract hate crimes and hate bias that exist in Canada today. During the workshop reports, several key issues were raised. Partnerships involving governments, organizations and individuals were seen to be necessary if the successful fight against hate crime and hate bias is to be achieved. Governments have established legislation to fight against hate crimes, but the strength of its enforcement requires collaboration among federal, provincial and municipal levels of government, as well as with the police and criminal justice systems. Anti-hate groups and community organizations also need to be partners with the government in combatting hate activities.

Recommendations have been forwarded to government departments previously through consultation meetings, input from anti-hate and community organizations, and suggestions from individuals. Presently, there is cynicism towards the government because many of these proposals have not been acted on. Much of the criticism could be allayed if the government were more willing to follow up on the public's concerns. The meeting participants urged the government to prepare a status report on the progress of the previously-submitted recommendations. Hate crimes should be on federal-provincial meeting agendas, especially with the solicitors general.

Many suggestions were offered by the working groups, but the two that received the greatest support were the development of a national anti-hate strategy and a press conference by the Secretaries of State responsible for Multiculturalism and Training and Youth, the Solicitor General and the Attorney General (the Minister of Justice).

2. MAJOR PROCESS RECOMMENDATIONS:

2.1 Development of an Anti-Hate National Strategy

A consensus was reached at the national meeting on the need for a national strategy to deal with hate crimes and hate bias. Both government and the communities have a stake in its development. Although several committee structures were suggested, the most important factor in creating a national strategy is the leadership from, and involvement of, representatives from anti-hate groups or community organizations, especially those affected by hate issues.

One issue that needs to be addressed is the acceptance of a standard definition for "hate". How is hate defined when it applies to an individual; how is it defined when it is systemic? The term needs clarification. Heritage Canada may already have several definitions from different sources regarding the term "hate".

If grassroots organizations are to be effective contributors to the process of combatting hate, they require not only moral support from government but financial assistance. With declining resources, the fear is that hate crimes are liable to escalate if organizations lack the necessary supports to constantly monitor and speak out against hate activities. In the age of electronic communications, many community organizations lack the equipment and training to facilitate electronic information. To assist these organizations, the government should

provide funding for resources and computer training so that community leaders have access to information on the Internet and other electronic sources.

The national plan should include various communications strategies, such as a newsletter distributed to interested groups and organizations, or a Web site on the Internet. Discussion groups could be established on the the Web site and would be a powerful communications tool for the sharing of ideas. Public awareness campaigns and public service announcements around hate crimes and bias activities would be helpful in educating Canadians.

Training participants to recognize hate crimes and bias activity should be an important component of the national strategy. People in the legal system, politicians, senior bureaucrats, and law enforcement personnel, for example, should be required to have training in race relations and hate crimes. The present race relations training programs need to be evaluated for their effectiveness. There should be coordination with the provincial education ministries and regional school boards to develop programs around hate crimes and activities, especially when youth are easily enticed into joining hate groups.

The national strategy should include ways in which to recognize those making a positive contribution to combatting hate crimes. It was suggested that moral leadership awards be presented to groups and individuals who have demonstrated leadership in this field.

Finally, a national monitoring body with representatives from different groups was recommended to monitor hate activities, advise the government, disseminate information, and sustain the anti-hate-crime network that has been established at this conference. This body should also audit government policies, programs and legislation to ensure that they are free of "systemic hate" and, where appropriate, nominate departments or organizations for an award if they have taken steps to eliminate hate crime and bias activity.

2.2 National Data Bank and Information Centre

Although information on hate crime and bias activity is available throughout Canada in the form of research studies, opinion polls, newspaper and journal articles and other documents, there is no national data bank nor a central clearinghouse for this information. There is a dire need to collect, catalogue and make available all resources related to hate crime and racism, for use by the government and the public. The data bank should also include materials that reflect on the positive contributions made to Canada by minorities.

A national directory of organizations involved in anti-hate activities should be developed, as well as listings of groups promoting or inciting hate. This can be done using some of the local level directories already in existence. Anti-hate groups and community organizations should be contacted for further information regarding programs and activities. If the directory were distributed to interested organizations, it would be a valuable tool in facilitating networking amongst these groups.

Government should commission a status report, developed by an independent research body, to determine what hate is, what its causes are and how it is manifested. Data on the extent of hate crimes and bias activities throughout Canada could be gathered from public meetings and focus groups.

The task of establishing a national data bank and information centre would be much too large for most grassroots organizations, which already have limited resources. Such an important resource centre would require a strong initiative from the government or from an existing national body.

2.3 Public Statement

The participants felt strongly that the heads of the three departments that collaborated to host the National Planning Meeting on Hate Crime and Bias Activity should make a public statement to the media to demonstrate the will of the government to fight such activities and announce directions that will be taken as a result of the meeting. A press conference should be called within 30 days of this meeting to provide an opportunity for the ministers to educate the Canadian public on the importance of dealing with hate crimes. It was suggested that the Secretary of State for Training andYouth should be invited to participate in the press conference, as youth are often the most vulnerable targets for recruitment by hate groups. Whenever racist media reports or hate activities occur, government members responsible for these areas should be seen as reacting quickly and forcibly to these events. In this way, they would be demonstrating a readiness to confront hate crimes.

2.4 Follow-up

A final recommendation was to have the participants of this national meeting come together within the year to review the outcomes of the processes that had been undertaken.

APPENDICES

Background Papers

The following Background Papers were prepared for participants in advance of the Planning Meeting.

Background Paper # 1

LEGISLATIVE AND POLICE ISSUES

1. INTRODUCTION

Although the law does not provide a complete solution to the problem of hate in Canadian society, the various legal instruments that exist to deal with hate crime and bias activity symbolize Canada's commitment to values of tolerance and equality. This discussion paper will set out what have been the key legal instruments in this area.

2. CRIMINAL CODE

Canada's hate crime legislation has its origins in the International Convention on the Elimination of All Forms of Racial Discrimination adopted by the U.N. General Assembly in 1965 to which Canada was a signatory. Article 4 deals with hate propaganda and hate groups. The Federal Government commissioned the Special Committee on Hate Propaganda (the Cohen Report) which in 1966 recommended

the inclusion of the hate propaganda provisions that were incorporated into the Criminal Code in 1970.

These laws can be challenged constitutionally on the ground they infringe section 2(b) of the *Charter of Rights and Freedoms* which guarantees "freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication." However, under section 1 of the *Charter*, any infringement of individual rights is subject "to such reasonable limits prescribed by laws as can be demonstrably justified in a free and democratic society." In other words, societal interests are weighed against individual rights.

2.1 Hate Propaganda

Sections 318 and 319 set out the offences of advocating or promoting genocide, and wilfully promoting hatred against an identifiable group. Both provisions require consent of the Attorney General for proceedings to be instituted, and refer to "identifiable groups" as defined as any section of the public distinguished by colour, race, religion or ethnic origin.

Section 318 prohibits advocating or promoting genocide against an identifiable group. Genocide is defined as acts committed with the intent to destroy in whole or in part any identifiable group by killing members of such a group or by deliberately inflicting conditions of life calculated to bring about its physical destruction. This indictable offence is punishable by up to five years imprisonment.

Section 319 refers to two offences. Section 319(1) refers to a likely breach of the peace arising from hatred incited by a statement communicated in any public place. The second offence, section 319(2) is committed by the wilful promotion of hatred against an identifiable group, as defined above, by communicating statements, other than in private conversation. There are a number of statutory defences to the second offence: that the statements were true; that the statements were a good faith expression of an opinion on a religious subject; that the statements were for the discussion of a subject of public interest and believed to be true; and that they were published in a good faith effort to identify hate- engendering matters in order to have them removed. The truth defence represents a significant hurdle in prosecutions under this section. These two offences are punishable for up to two years imprisonment. Section 320 allows for court seizure of material believed to be hate propaganda in certain circumstances.[1]

In *R. v. Keegstra*, the Supreme Court unanimously held that, although section 319(2) violated the accused's right to freedom of expression, and a bare majority (4-

3) concluded the restriction of this right was reasonably justifiable in a free and democratic society.

There have been very few prosecutions under these Criminal Code provisions on hate crime for a number of reasons identified by lawyers, community groups, and academics. Victims have not come forward because they do not trust the police, fear retaliation, or are unaware of their legal rights as victims of hate crime. Various sectors of the legal system may not recognize or make note of the hate motivation of the accused. Provincial Attorneys General also rarely provide the necessary consent for prosecutions to proceed.

2.2 Publishing False News

This provision was declared unconstitutional by the Supreme Court of Canada in the 1992 case of *R. v. Zundel*.[2] In this case, the Attorney General of Ontario refused to consent to charging Zundel for wilfully promoting hatred by publishing a pamphlet denying the Holocaust. A private criminal charge of spreading false news was thus laid, which did not require such consent, that was eventually taken up by the Crown.

2.3 New Sentencing Provisions

Hate crime and activity can be prosecuted under other, more general provisions of the Criminal Code as well. For example, prosecutions of racist violence and public disorder can be are dealt with under other Criminal Code provisions for assault or causing a public disturbance. In the past, the courts have in a few instances taken hate motivation into account in sentencing.

Last fall, Bill C-41 incorporated key sentencing principles into the Criminal Code (section 718.2(a)(I)) that guide courts to take into consideration aggravating factors related to the offence when there is evidence that the offence was motivated by hate based on race, nationality, colour, religion, sex, age, mental or physical disability or sexual orientation of the victim. In submissions on the Bill, groups had questions about how the legal system (police, prosecutors, judges) would take steps to recognize hate-motivation, and how cases that utilize the new principles would be monitored.

3. REMEDIES IN THE CIVIL COURTS

3.1 Human Rights Legislation

The *Canadian Human Rights Act* only applies to undertakings within federal jurisdiction, including the federal civil service, banks, telecommunications and inter-provincial transportation. Section 13 prohibits communications through the telephone lines of anything that will likely expose someone or some group to hatred because of membership in an identifiable group, which is defined in the *Act* to include religion, race, colour, national or ethnic origin, age, sex, marital status, disability, and sexual orientation. This section states that the offence may apply to a "person or a group of persons acting in concert to communicate telephonically or to cause to be so communicated, repeatedly, in whole or in part by means of the facilities of a telecommunication undertaking within the legislative authority of Parliament...."

This provision does not apply to anything communicated by way of a broadcasting undertaking. Owners or operators of telecommunication undertakings which are used by individuals transmitting hate material are not liable. Section 13 has been used successfully despite constitutional challenges, such as in the case of John Ross Taylor and the Western Guard Party.[3] The remedy is a cease and desist order to stop messages, with the potential for criminal contempt of court proceedings for failure to comply with such an order.

The benefit of using the *Canadian Human Rights Act* is that the standard of proof to meet is less onerous than the criminal standard. Under the Criminal Code provisions, the prosecution must prove the violation beyond a reasonable doubt, whereas the civil standard of proof is a balance of probabilities.

A growing area of concern is the application of these provisions to the Internet, especially in relation to the limited jurisdiction of the Act when hate messages originate outside of Canada. The direct linkage of home computers using telephone lines allows the transmission of hate propaganda across provincial and international borders with little risk of detection. Computer bulletin boards allow individuals to circumvent the jurisdiction of the Act, allowing subscribers to exchange information on the availability of prohibited material, as well as transmit and exchange such material itself. Also, evidentiary difficulties may be posed in relation to the responsibility of individuals who may not themselves have posted hate messages on the internet, but have had others do so. Other concerns about

section 13 relate to general systemic problems about the *Act* generally, in terms of delay in investigation due to lack of resources. There are also issues that have been raised about the lack of adequate remedies to compensate victims and punish offenders.

Besides the federal human rights remedies, various provincial human rights legislation also deal with hate-motivated activity. Provincial human rights acts prohibit discrimination in housing, employment, and the provision of services on the basis of a number of grounds, which vary slightly between provinces. Most provincial human rights codes and acts prohibit a narrow category of hate speech, involving the publication or public display of "any notice, sign, symbol, emblem or other similar representation" with intent to infringe the right of non-discrimination.

3.2 Broadcasting Act

The promotion of hate through broadcasting means is prohibited by several different regulations which prevent licensees from broadcasting or distributing programming containing abusive comments that tend or are likely to expose individuals or groups to hatred or contempt on the basis of a discriminatory ground.[4]

3.3 Other Civil Remedies

There has been some discussion of the possibility of establishing a civil cause of action in response to hate activity because of the difficulty in prosecuting hate crime under the *Criminal Code* and *Canadian Human Rights Act*.[5] Legislative action would be required to institute this form of civil recourse, since the Supreme Court of Canada has in the past ruled that the existence of human rights legislation had foreclosed the possibility of a common law tort of discrimination.[6]

A few provinces have enacted legislation to deal with hate propaganda in the civil courts. B.C. adopted the *Civil Rights Protection Act* in 1981 that creates a tort action of promoting hatred on the basis of colour, race, religion, ethnic origin or place of origin. Damages do not need to be proven by the targeted group or individual bringing the action. The violator is liable to a fine or a short term of imprisonment. Manitoba's *Defamation Act* deals with group libel with remedies limited to an injunction. These provisions have very rarely been used.

4. OTHER LEGAL PROVISIONS

4.1 Immigration

The *Immigration Act* provides means of excluding individuals who might be involved in hate crime. Under s. 19 of this Act, persons who will commit a criminal offence punishable by indictment or engage in organized criminal activity, and persons who will engage in acts of violence or are likely to participate in unlawful activities of an organization likely to engage in such acts are not to be admitted into Canada.

4.2 Customs and Excise

Section 101 of the *Customs Act* allows for the interception and seizure of objects or dangerous materials that may incite hate and violence toward a particular group in society. Tariff code 9956 of Schedule VII to the *Customs Tariff* states that books, printed paper, drawings, paintings, prints, photographs or representations of any kind that constitute hate propaganda within the meaning of the Criminal Code are prohibited from entry. The guidelines indicate that goods with some or all of the following characteristics may be subject to prohibition under the tariff code as hate propaganda:

-goods that blame an identifiable group for serious economic or social problems

-goods alleging that an identifiable group is manipulating media, trade and finance, government or world politics to detriment of society as a whole

-goods alleging that an identifiable group is racially inferior and/or weakens other segments of society to the detriment of society as a whole

-goods alleging that an identifiable group seriously threatens society as a whole

4.3 Other Provisions

A more detailed discussion of immigration provisions, customs and excise provisions, and other international aspects will be discussed in the third discussion paper.

Endnotes

1. The term "promotes" entails active support or instigation, rather than mere encouragement or advancement. "Communicating" includes communicating by way

of telephone, broadcasting, or other audible or visible means. "Statements" are defined to include spoken, written or recorded words, and gestures, signs, or other visible representations. "Public place" includes places in which the public has access by right, or by express or implied invitation. There has been concern whether "public place" refers to a place to which any members of the public have access or to which only some members of the public have access, and whether the term "public" excludes private property (e.g. most internet communications). The meaning of "wilfully" in s. 319(2) requires that the accused have the intention of promoting hatred, i.e that they had the conscious purpose of promoting hatred against the identifiable group or if they foresaw that the promotion of hatred against that group was certain to result.

2. (1992), 95 D.L.R. (4th) 202.

3. *Canada (Human Rights Commission) v. Taylor*, [1990] 3 S.C.R. 892.

4. See Michel Racicot, Mark S. Hayes, Alec R. Szibbo, and Pierre Trudel, *The Cyberspace is Not a "No Law Land": A Study of the Issues of Liability for Content Circulating on the Internet (*Ottawa: Industry Canada, 1977) at 87, referring to *Radio Regulations*, 1986, s. 3(b); *Specialty Services Regulations*, 1990, s. 3(b); *Television Broadcasting Regulations*, 1987, s. 5(b); and *Pay Television Regulations*, 1990, s. 3(b).

5. Ontario's current Attorney General when in opposition brought forward a private member's bill initiating such legislation which was later withdrawn.

6. *Board of Governors of Seneca College v. Bhaduria*, (1981) 124 D.L.R. (d) 193.

Background Paper # 2

COMMUNITY DEVELOPMENT AND SOCIAL JUSTICE ISSUES

1. OVERVIEW

When individuals (or their property) are the target of violence solely because of who they are or who they are thought to be, they are the victims of hate crime. Hate crime examples include throwing a man to his death off a bridge because a group of men thought he was gay; repeatedly harassing a Black woman and her family in an apartment building; and vandalizing grave markers at a Jewish cemetery.

The most common targets of hate-motivated crime are Blacks, Jews and gays, in that order.(1) Such crimes are problematic because a single incident creates a climate of fear within the entire targeted group. Most hate crimes in Canada are committed by individuals who act out feelings of hate, bias or prejudice. Organized hate groups are responsible for about five per cent of hate-motivated

activities in Canada at present.(2) . Since hate crimes do not occur in a vacuum, education and strong community action concerning prejudice can prevent hate crimes and act as an important complement to hate crime laws.

A preventative approach to hate crime and bias activity exposes the root cause (motivation) of a crime and challenges the community to work on solving the underlying problem (prejudice). Today, most recommendations on future directions for policing in Canada emphasize partnerships among communities, police and governments to address crime prevention issues. The community-based, crime-prevention focus is supported by a range of reports, such as the 1993 "Horner Report" on Crime Prevention in Canada, the National Symposium on Community Safety and Crime Prevention (including consultations) of the same year and Partners in Crime Prevention: For a Safer Quebec, the report of the Task Force on Crime Prevention. The community-based approach is action oriented. Vulnerable groups use a problem-solving process to identify barriers and work on solutions with the police. The approach is often more effective, inclusive and less costly than traditional approaches.

Bill C-41

The federal government demonstrated strong leadership by amending the Criminal Code in 1996 to strengthen sentencing for any Criminal Code offense that is motivated by hate. The move prompted community discussion, raised overall awareness of the issues and helped to mobilize communities. It also highlighted the need for strengthened responses in the communities where hate-motivated incidents occur and usually go unreported.

There is growing consensus now on the Canada-wide need for consistent policy and service delivery responses from the criminal justice system at the local level. Police services, for example, are at different stages; this indicates either a lack of resources, a lack of awareness or a lack of commitment to the issue. Police services are also creating hate crime units in response to demands from marginalized communities that are the deliberate targets of hate-motivated crime. .

2. GAPS AND HURDLES IDENTIFIED BY VARIOUS GROUPS AND REPORTS

2.1 Under-reporting and a lack of statistics

Many reports suggest that vulnerable victims of hate-motivated crime do not have trust and confidence in the police and other parts of the criminal justice system. This is the context for incidence studies such as the June 1996 League for Human

Rights of B'nai Brith Canada report that identified a "steady increase" in the last few years in hate crime and incidents of harassment against racial minorities, Jews and gays in Metropolitan Toronto. (3)

While some police services (and groups) collect hate crime statistics, Canada does not have a national policy for collecting data on the small number of incidents that do reach the police. Communities and police forces alike have noted that there is a need for a uniform definition of hate crime in Canada - although recognizing the difficulty in developing a definition that is widely acceptable.

2.2 Service delivery challenges identified by groups and in reports:

- inappropriate responses;
- insensitive attitudes;
- the overall environment is not welcoming;
- patrol officers miss hate-crime clues because they lack training or they are unwilling to act in this area;
- the onus is on the victim to understand the system;
- victims lack support and feel isolated;
- lack of co-ordination among criminal justice system agencies;
- lack of public information and education campaigns;
- lack of awareness in schools and among teachers;
- lack of training for social service delivery workers.

3. MODELS OF SUCCESS

3.1 Leadership commitment to community-identified issues

The best examples combine clear recognition of minority communities and their needs with a proactive, comprehensive approach to identified problems. The public receives a clear message, for example, the criminal justice system will not tolerate hate-motivated violence. Similar messages from leaders in education and social services can give the same strong message for schools and social service delivery.

3.2 Action plans, in partnership

Community consultations indicate that communities want to develop action plans to meet specific needs. Partnerships are most successful when they are based on respect, recognize diversity and have a solid process of accountability. Other important elements are trust; well-defined objectives; shared information; extensive

consultation; and co-ordinated efforts. Partners can then work in an open and transparent manner.

3.3 Addressing exclusion

It is important to acknowledge service delivery *exclusions* where a group or an issue is repeatedly excluded from the assessment of problems and solutions.

Where there has been meaningful partnership work it produced a significant increase in *reporting* of hate crime and bias activity. When the police demonstrate genuine understanding of the vulnerability particular to individuals who are targeted solely because of their real or perceived race, religion, sexual orientation, disability or ethnicity, victims overcome deep fear of the police. The same goes for the schools and other social service deliverers.

3.4 Adequate training

Community concerns prompted local and provincial police services and the Royal Canadian Mounted Police (RCMP) in recent years to begin to provide training on cultural, diversity and anti-racism topics. There is a growing view that diversity training -- developed in partnership with communities affected by hate-motivated crime -- should be comprehensive, inclusive, mandatory and provided throughout a police officer's career.

The need is clearly identified. The Canadian Centre for Police Race Relations report, *Issues in Police Intercultural and Race Relations Training in Canada*, points out that "the police are most likely to mistreat individuals who are stigmatized by the dominant society. This is what leads, in part, to `over-policing' and 'under-protecting' minorities..." (4)

3.5 Hate and Bias Crime Units

In recent years, communities and police have indicated that strongly supported police hate crime units staffed with properly trained officers are a crucial element in reducing barriers between minority communities and the police and building confidence and trust. Officers would have specific training on hate crime, community development and diversity issues. Eventually, minority groups should be able to count on receiving appropriate, sensitive responses from any member of a police service.

3.6 Provide victims with a seamless response

There is a growing body of opinion that points to the need for co-ordinated, not piecemeal responses. Since the criminal justice system does not exist in isolation, this approach takes in many sectors, including education, health and social service providers. For example, Toronto's Wellesley Hospital developed an emergency room protocol, in partnership with The 519 Church Street Community Centre and the University of Toronto, to provide better service to victims of gay and lesbian bashing. The hospital wants victims to feel safe enough with staff to identify anti-gay motivation so staff can help them deal with the emotional aftermath of traumatic personal attacks. These efforts are consistent with federal health promotion policy that says that "prevention involves identifying the factors which cause a condition and then reducing or eliminating them." (5)

3.7 Role of frontline workers

This is an example of where innovative, problem-solving work has occurred, with built-in accountability, evaluation and community empowerment. Community-based work has included outreach and consultation; development of action plans; education and awareness activities; constant involvement of new members of the affected community (volunteers); fostering the creation of advocacy and support groups; provision of services; partnership and protocol development with a range of sectors and communities; resource sharing; provision of training; maintaining strong links with other groups; spotting emerging issues and responding to them quickly; and research and evaluation. Community workers are examples of safe entry points for community members; they can provide quick feedback to a service provider on what works.

Some access needs are generic to all groups affected by hate-motivated crime. Others are specific to the group. Accessibility, for instance, means more than physical access; the needs of people with disabilities vary according to the disability (for example, whether one is blind or vision impaired, or one is deaf or hearing impaired).

3.8 Quick responses

In September 1996, the Vancouver Police Department established a Diversity Advisory Committee composed of community members who advise the chief of police on diversity issues. The committee addresses immediate matters and monitors action on matters such as the police response to diversity

recommendations in the 1994 Commission of Inquiry on Policing in British Columbia. For instance, the two-year tenure of officers in the Native Liaison Unit (NLU) is under review now with members of the NLU in consultation with the Vancouver Police and the Native Liaison Society. The tenure likely will be extended significantly. As well, the Attorney General of British Columbia will soon establish a Provincial Hate Crime Unit.

4. YOUTH AND THE EDUCATION SYSTEM

An education system that reflects and respects the diversity of our society is critical to building a healthy community. Through antiracism and ethnocultural equity policies, programs and practices, some jurisdictions strive to create school environments in which students accept and appreciate diversity and reject prejudiced and discriminatory attitudes and behaviour. The Hate Crime Unit of the Metro Toronto Police works with schools on youth-identified, anti-violence events that built self esteem and make students less vulnerable to increasingly slick hatemongers. Student initiatives encompass drama groups, school bands, peer mediation, conflict prevention and anti-violence groups. The Unit also developed a bilingual, anti-hate video, in partnership with boards of education, for Grades 6 to 13.

In response to the community-identified need for educational materials for teachers, some organizations are starting to develop teacher training and background materials to help teachers address hate-related problems in their classrooms.

While may be a decline in overt organized hate group activity in Canada since the recent peak in 1992/93, there is concern that there is increased underground activity taking place. As such there is consensus that continued vigilance and ongoing public education is necessary as hate group leaders attempt to put on a "respectable" front to enhance their credibility for the purposes of recruitment. (6)

Peer support is vital

Victims usually hesitate to report hate incidents to the police; studies indicate they will, however, make a report to a community group. For example, Toronto's Lesbian, Gay, Bi Youth Line is a 24-hour, province-wide phone line; dozens of trained volunteers gave peer support to 5,000 young persons in the province last year -- including a 16-year-old lesbian in Huntsville who was threatened with a knife and then stoned by students who chanted, "stone the dyke..." (7)

5. MEDIA

Increasingly, communities express a desire for proactive efforts to encourage the media to cover hate crimes as a serious community safety issue; they also want the media to take part in public education initiatives and to promote positive strategies to counter hate activity.

6. CONCLUSION

Community development work to create safer, healthier communities evolves gradually and expands steadily through partnerships, mutual learning, multi-sector co-ordination and resource sharing and provides an important complement to solutions based in the justice system and laws.

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Background Paper # 3

TECHNOLOGY AND INTERNATIONAL ISSUES

1. INTRODUCTION

Canada has a unique set of values embodied in our laws and our policies, which seek to promote and protect respect for diversity in people. These fundamental Canadian documents establish a balance between the right to freedom of expression and the right to live in peace and security.

An overview of these laws is found in the first Background Paper #1. At the same time, Canada's Multiculturalism Policy and the Canadian Multiculturalism Act mandate the federal government to support the promotion of respect for diversity of Canadians. Public education on diversity and the importance of respect for others, cross-cultural understanding and anti-racism are all valued activities.

On the international level, Canada is signatory to Covenants and Conventions which also promote both freedom of expression and the elimination of hate propaganda, hate groups and hate activities, although it is left to each state how to accomplish this in practice. This paper deals with the flow of hate across international boundaries.

International Commitments and Forums

The Universal Declaration of Human Rights, proclaimed by the UN General Assembly in 1948, provides the basis for subsequent freedom of expression and anti-racist legislation. Article 20(2) of the International Covenant on Civil and Political Rights which came into force in 1976, prohibits "the advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. The International Convention on the Elimination of Racial Discrimination was ratified by Canada in 1970 and in Article 4, it calls upon states to pass laws against "the dissemination of ideas based on racial superiority or hatred", to outlaw membership in hate organizations, and to prevent any promotion of hatred.

Canada is a member of a number of organizations that deal with Human Rights Issues, particularly the United Nations Commission on Human Rights, the Organization for Security and Cooperation in Europe, the Commonwealth and *la francophonie*. Canada could pursue international agreements on the flow of hate across international boundaries in these forums.

2. HATE ON THE INTERNET

2.1 Background on the Internet

The Internet is the network of telephone cables and computers around the world, linked together electronically. There are over 40 million users of the Internet world wide, but most are in the United States. Communications on the Internet can now take the form of text, audio or video. While satellites can be integrated into this system, for the moment, the vast majority of communications is over telephone cables. There is no central control or authority.

2.1.1 E-mail

Communications can take the form of electronic mail, text or other content sent from one individual station to another with a specific electronic address. For the

most part, this is usually seen as the electronic equivalent of mail and is usually understood as private.

2.1.2 Bulletin Boards

Electronic Bulletin Board Services (BBS) are basically limited forums for information exchange controlled by the individual or organization which establishes the bulletin board on a computer. The Bulletin Board must be accessed by direct dialling. The number of on-line users is limited by the number of telephone lines into the Bulletin Board although others can access the site for posting and viewing messages. The group using the bulletin board may be relatively limited to a small membership or may be open to all who pay a fee. It would be open to question whether a particular BBS would be seen as a forum for private or public communication. It can be clearly established who is the owner of the BBS and they could likely be held liable for information and messages contained on it.

2.1.3 Usenet

Usenet is a cooperative e-mail system which comprises thousands of discussion groups organized into various hierarchies by broad subject area (eg. rec groups are oriented towards the arts, recreational activities and hobbies; soc groups address social and cultural issues). Groups can be moderated (centrally scanned to ensure people stay on topic) or unmoderated. Individual discussion groups are created if users vote to create them. In addition an alt (for alternative) hierarchy has sprung up. No vote is necessary to create a group. It would be impossible to monitor all discussion groups on a continuous basis.

2.1.4 World Wide Web

The World Wide Web is the network of electronic data sites again linked by telephone cables. These data sites may be built simply for visiting by outside users, or may contain ftp sites (file transfer protocol - a capacity to transfer a text electronically from one computer to another) from which information can be downloaded to a home computer. The sites may contain text, audio, still or moving images. Hyperlinks between different areas of the same site and between one site and another may be created whereby a user can follow any idea they wish. For instance a text on the City's Web Site may contain a list of tourist attractions. The user may go through the list or, at any time click on the name of an attraction and be connected to the web site of that attraction. Here again, there may be links to other attractions of the same kind but in other cities, and so on. The number of links to follow is astronomical. The total collection of information so connected is called a hypertext.

2.2 Hate activities on the Internet

Individuals can receive hate messages in their e-mail. In a recent case in Ottawa, over 20 female users at Carleton received harassing messages. The messages were traced to Toronto and someone has been arrested.

At one point, a number of white supremacists, racists and Holocaust deniers were extremely active in discussion groups. Most messages supporting their point of view appeared on alt groups such as alt. skinheads, alt.politics.white-power or alt.revisionism, but a racist would occasionally venture into other groups, make a racist comment and then leave. For instance, "The Nigger Walks", a message posted on the OJ Simpson.fan group by a white racist, engendered a firestorm of angry messages and countermessages. The original poster, his purpose accomplished, did not further intervene.

Early activity of racists on the Internet were primarily anti-Semitic and these postings still take up a large place on the Internet. Over the past few years, as the number of groups and interests have mushroomed, hate has focused on other groups as well. Blacks have been the targets of propaganda aimed at proving they are more violent and less intelligent. Chinese immigrants to Canada have been a subject of controversy on Canadian discussion groups, increasingly as immigrants from Hong Kong have come into the country. A number of racists are also homophobic. Some racist posters have focused on North American aboriginal groups.

Through networking and information sharing of anti-racists and intensive efforts of volunteers organized by groups such as the Nizkor project, the racist and anti-Semitic comments by the serious organizers of Holocaust denial and hate propaganda have been countered to the point that the major players in this field have retreated from open debate on the Usenet and have established non-interactive web sites where their message is less open to challenge (e.g. Greg Raven of the Institute for Historical Revision, Ernst Zundel, etc.).

These individuals now limit their interventions on discussion groups and operate through proxies. In addition they and many groups have home pages and web sites on the world wide web. The best guide to these sites, indicating their location, sponsoring organization and basic hate targets is found at www.hatewatch.org.

The largest self-advertised White Supremacy BBS in North America is found in Toronto and was set up by an individual, formerly associated with the Heritage Front and is occasionally monitored by anti-racist activists to check its contents.

2.3 Application of Canada's Hate Laws to the Internet

2.3.1 Criminal Prosecution

While criminal prosecution for promotion of hatred is an option under current laws, it is one which is not frequently used. Criminal prosecution for promotion of hatred can only be undertaken by a provincial Attorney General. These have been rare.

The Canadian Human Rights Act has been used successfully to shut down recorded hate messages over the telephone, for example the Bobiwash case concerning hate messages against Aboriginal people in Toronto. Since the Internet is currently transmitted primarily over telephone lines, the Canadian Human Rights Act could also be used.

2.3.2 Jurisdiction

Who is to be liable for hate messages either sent or retrieved from foreign sources? According to one study, "The Cyberspace is Not a `No Law Land'", prepared for Industry Canada in February, 1997, the service provider, the user and the originator may all be liable but only those located in Canada could come under Canadian jurisdiction. However, given the paucity of cases, the case law does not provide guidelines for ambiguous areas.

It is becoming possible to transmit audio and video messages over the Internet. At some point the difference between transmission and broadcasting will have to be defined and the role of the Canadian Radio Television Commission clarified in regulating such activities.

In enforcing Canada's laws, some attempt could be made to screen out sites and messages coming from abroad. Software exists for helping parents to screen what their children can access and is becoming more effective. But, given the potentially infinite number of possible links from one site to another, it is not yet possible to guarantee that some pathway cannot be found to the address of the forbidden site. When Ernst Zundel's site was banned from German Internet providers, mirror sites with exactly the same content but with different addresses were created. There is no limit to the number of mirror sites that can be created.

2.3.3 Holocaust Denial

This is a pseudo-scholarly historical revisionism targeting the Shoah (the Holocaust) particularly. It is very common on the Internet and is used as a tool to promote hatred against Jews and to rehabilitate Hitler and the Nazis. The basic argument of deniers is that the Holocaust did not take place, that the numbers of Jews who died was large but in keeping with the terrible conditions of war and that Hitler and the Nazis had legitimate reasons for fearing Jews. Further, it is claimed Jews are perpetrating a fraud on the world by claiming the Holocaust did take place and are doing so solely for political and financial gain. In Germany, Switzerland and France, this form of hate promotion is subject to criminal prosecution. In Canada, Holocaust denial may or may not constitute hate propaganda.

2.3.4 Racist Science

"Studies" and "statistics" are quoted to show that "Jews own all the media", that "Blacks are more prone to commit crime", that "immigrants steal jobs", that "gays and lesbians cause aids", etc. This propaganda aggressive and not predictable in its particulars. It is not possible to know what specific claim will be made next and to have the information at hand which would give the context for a number or a statement or which will refute the original. It is also usually impossible to classify as hate propaganda under the law.

3.0 REVENUE CANADA AND PROHIBITED MATERIALS

The importation of hate materials is covered under the Customs Tariff Act. The interpretation of hate propaganda is embodied in the Interpretative Policy and Procedures of the Administration of Tariff Code 9956 issued by Revenue Canada.

The right of Revenue Canada to apply this code is limited to materials not yet in the country. Once the goods have arrived in Canadian hands, Revenue Canada's jurisdiction ends and the materials must be tested in the courts through criminal prosecution for the promotion and distribution of hate propaganda. Indeed, recent decisions on materials deemed obscene indicate the courts are reluctant to give Revenue Canada the power to act unilaterally, using only administrative guidelines and procedures and without reference to a court.

Revenue Canada has some capacity to screen all materials coming into the country. While it keeps a list of materials deemed to be hate propaganda, any republication of the material in another format or edition requires a new review.

4.0 THE IMMIGRATION ACT

Canada's Immigration Act, under section 19, is used to prevent entry into Canada of persons who will commit a criminal offence punishable by indictment or engage in organized criminal activity, and persons who will engage in acts of violence or are likely to participate in unlawful activities of an organization likely to engage in such acts. Individuals likely to cause a breach of the peace can also be prevented from entering the country as visitors. These sections have been used against organized crime. Canada has not made membership in hate organizations by itself a criterion for excluding an individual from entering the country.

It would take ongoing effort, resources and expertise to keep abreast of the necessary information to keep out such individuals. Furthermore, "leaderless resistance" has been forced on hate groups as their leaders have been arrested or are serving time; civil suits for damages have caused some groups to go bankrupt. The formal association among individuals is much looser in central Canada than before but communications over the Internet or by other means allows them to stay in touch and to coordinate their efforts. Sings of increased activity can be seen in Western canada.

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